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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 HAROLD E. MONTAGUE,

7 Plaintiff,

8 v.

9 JACKSON, et al.,

10 Defendants.
11

Case No. 2:16-cv-01680-JAD-CWH

ORDER

12 Presently before the court is Nevada state-prison inmate Harold E. Montague's Motion for
13 Time to Serve Defendants and Request for Service by Marshal (ECF No. 26), filed on November
14 28, 2018. Defendant Laurie Hoover filed a notice of non-opposition (ECF No. 27) on December
15 12, 2018.

16 Also before the court is Montague's Motion for Discovery (ECF No. 28), filed on
17 December 31, 2018.

18 **I. MOTION TO EXTEND TIME TO SERVE**

19 Montague requests additional time to serve the defendants due to side effects Montague is
20 suffering from psychotherapy and psychotropic drugs. He also requests that the United States
21 Marshal assist him with service. Along with his motion, Montague provides proposed
22 summonses for Dr. Laurie Hoover, the State of Nevada, Jackson, Racoma, Renee Baker, and the
23 S.E.R.T. team at High Desert.

24 In its screening order, the court allowed Montague's Eighth Amendment excessive force
25 and Fourteenth Amendment due process claims to proceed against Dr. Hoover and Dr. Racoma.
26 (Screening Order (ECF No. 9) at 6-7.) The court dismissed all other claims without prejudice.
27 (*Id.*) As a result, Dr. Hoover and Dr. Racoma are the only defendants in this case. The court
28 denies Montague's motion to the extent he seeks to serve any other defendants.

1 The Nevada Attorney General's office accepted service on behalf of Dr. Hoover. (Notice
2 (ECF No. 19).) Thus, to the extent Montague requests assistance serving Dr. Hoover, his motion
3 is denied as moot because she has already been served and appeared in this case.

4 The Nevada Attorney General's Office did not accept service on behalf of Dr. Racoma,
5 but it provided his last-known address under seal. (Notices (ECF Nos. 20, 21).) Thus, to the
6 extent Montague requests additional time and assistance serving Dr. Racoma, his motion is
7 granted. Montague has an additional 45 days to serve Dr. Racoma. Given that Montague is
8 proceeding *in forma pauperis*, the court will order the United States Marshal to assist him with
9 service on Dr. Racoma under Rule 4(c)(3) of the Federal Rules of Civil Procedure. The court
10 further will order the clerk of court to mail Montague the paperwork required for the United
11 States Marshal to assist with service.

12 **II. MOTION FOR DISCOVERY**

13 Montague moves to compel five categories of documents. Under Rule 37(a)(1) of the
14 Federal Rules of Civil Procedure, a motion to compel must include a certification that the movant
15 has in good faith conferred or attempted to confer with the other party to resolve the dispute
16 without court action. Fed. R. Civ. P. 37(a)(1). Additionally, Local Rule 26-7(c) provides that:

17 discovery motions will not be considered unless the movant (1) has made a good
18 faith effort to meet and confer as defined in LR IA 1-3(f) before filing the motion,
19 and (2) includes a declaration setting forth the details and results of the meet-and-
confer conference about each disputed discovery request.

20 LR 26-7(c). In cases involving an incarcerated individual appearing pro se, the meet-and-confer
21 requirement may be satisfied through written communication. LR IA 1-3(f)(1). Given that
22 Montague does not certify he met and conferred with defendant's counsel before filing his
23 motion, the motion to compel is denied without prejudice.

24 **III. CONCLUSION**

25 IT IS THEREFORE ORDERED that Montague's Motion for Time to Serve Defendants
26 and Request for Service by Marshal (ECF No. 26) is GRANTED in part and DENIED in part. It
27 is granted to the extent that (1) his deadline to serve Dr. Racoma is extended to February 25,
28 2019, and (2) the court will order the United States Marshal to assist Montague with service on

1 Dr. Racoma under Federal Rule of Civil Procedure 4(c)(3). The motion is denied in all other
2 respects.

3 IT IS FURTHER ORDERED that the clerk of court must mail to Montague a blank
4 summons form and a blank USM-285 form, along with a copy of this order.

5 IT IS FURTHER ORDERED that Montague must complete the forms as to Dr. Racoma
6 to the extent he can and file them with the court by January 31, 2019.

7 IT IS FURTHER ORDERED that upon receipt of the proposed summons and USM-285
8 form from Montague, the clerk of court must complete the forms with Dr. Racoma's last-known
9 address that was filed under seal at ECF No. 20; issue the summons; and deliver the summons,
10 USM-285, a copy of the first amended complaint (ECF No. 6), and a copy of this order to the
11 United States Marshal for service.

12 IT IS FURTHER ORDERED that Montague's motion to compel (ECF No. 28) is
13 DENIED without prejudice.

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15 DATED: January 10, 2019

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19 C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE